

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EMERSON OLLIE, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY, and
OAKLAND COUNTY PROSECUTOR'S
OFFICE,

UNPUBLISHED
June 14, 2007

Petitioners-Appellees,

v

KATHERINE OLLIE, a/k/a KATHERINE
FESSLER,

No. 269029
Oakland Circuit Court
Family Division
LC No. 99-616811-NA

Respondent-Appellant.

Before: Servitto, P.J., and Jansen and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because the trial court had the court had subject-matter jurisdiction over this matter, the statutory grounds for termination were established by clear and convincing evidence, and the evidence did not clearly show that termination of respondent's parental rights was not in the child's best interests, we affirm.

A petition seeking temporary custody of the minor child was filed shortly after his birth in 2002. During her pregnancy with the minor child, respondent failed to provide proof of prenatal care, and did not visit with her obstetrician despite the fact that the child was several weeks overdue. At that time, the minor child's five older siblings were already in temporary custody due to allegations of neglect.

Respondent's parental rights to her five older children were ultimately terminated. After several hearings occurring over more than three years, respondent's rights to the minor child were terminated as well.

Respondent first challenges the trial court's jurisdiction over the child. To the extent that respondent challenges the trial court's subject-matter jurisdiction, we review this issue de novo. *Ryan v Ryan*, 260 Mich app 315, 331; 677 NW2d 899 (2004).

A court's subject-matter jurisdiction may be challenged at any time, even collaterally. *In re Hatcher*, 443 Mich 426, 438; 505 NW2d 834 (1993). Subject-matter jurisdiction is established initially by the pleadings, such as the petition, and exists "when the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *Id.* at 444.

Here, the initial petition alleged that the minor child's home, by reason of respondent's neglect, was an unfit place to live. The petition included allegations that respondent's other children were already court wards, as well as allegations concerning respondent's improper parenting techniques during visitations with her other children, and deficient prenatal care during her pregnancy with the instant minor child. A child may come within the court's jurisdiction on the basis of a parent's treatment of other children. *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005). Because the petition included allegations bringing this case within the class of cases the court is authorized to adjudicate under MCL 712A.2(b), the court had subject-matter jurisdiction over the case.

To the extent that respondent also challenges the trial court's exercise of jurisdiction, she is precluded from raising such a claim in this appeal. As this Court explained in *In re Gazella*, *supra* at 679-680,

[m]atters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights.

See also, *In re Hatcher*, *supra* at 444. Respondent failed to appeal the trial court's initial dispositional order, see MCR 3.993(A)(1), and is barred from collaterally attacking the trial court's exercise of jurisdiction in this subsequent appeal from the order terminating her parental rights. *In re Hatcher*, *supra* at 444; *In re Gazella*, *supra* at 680.

Next, respondent argues that the statutory grounds for termination were not established by clear and convincing evidence. We disagree.

The petitioner must establish a statutory ground for termination under MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We review the trial court's decision for clear error. *Id.* at 356. A trial court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Once the court finds that a statutory ground for termination has been established, MCL 712A.19b(5) requires that it terminate the respondent's parental rights to the child unless it finds that termination is clearly not in the child's best interests. *In re Trejo*, *supra*, at 364-365.

Here, more than 182 days had elapsed since the court issued its November 12, 2004, initial dispositional order for the child. The evidence showed that five other children were removed from respondent's care because of neglect, and respondent's parental rights to those children were eventually terminated after she failed to benefit from services. While proceedings involving the other children were pending, respondent became pregnant with the child at issue in this case, and failed to obtain recommended prenatal care. Despite completion of some parenting

skills training, respondent continued to display poor parenting skills, and failed to regularly attend or benefit from therapy designed to address issues of self-esteem, anger management, and domestic violence. Respondent was not receptive to services necessary for a successful reunification and her emotional deficits prevented proper parenting of her special needs child. Considering respondent's past history and failure to benefit from services, it was not reasonably likely that she would be able to adhere to the requirements of her treatment plan within a reasonable time considering her child's age. Thus, the trial court did not clearly err in finding that § 19b(3)(c)(i) was established by clear and convincing evidence. Similarly, considering respondent's failure to provide any care for the child during his lifetime and her repeated failure to comply with her treatment plan requirements or benefit from services, termination was also warranted under § 19b(3)(g).

Additionally, because the child was a special needs child with a seizure disorder, and there was evidence that respondent would not be able to recognize the child's special needs, or place the child's interests above her own, the trial court did not clearly error in finding that termination was also justified under § 19b(3)(j).

Finally, the child was removed from respondent's care shortly after his birth and there was little evidence of a bond, if any, between respondent and the child. The evidence did not clearly show that termination of respondent's parental rights was not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, *supra* at 356.

Affirmed.

/s/ Deborah A. Servitto
/s/ Kathleen Jansen
/s/ Bill Schuette